

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MICHAEL D. WARDELL,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 13-201 Erie
)	
CITY OF ERIE OFFICERS SGT. KEITH)	
A. KASCHALK, CPL. JANUS,)	
CPL. MATT WILLIAMS,)	
EPD JASON RUSSELL,)	
ERIE COUNTY SHERIFF'S DEPT.,)	
CHIEF DEP. HABURSKY,)	
DEP. DAVID ORR,)	
DEP. JEREMY MARKHAM, and)	
CPL. DOUG KUBIAK,)	
)	
Defendants.)	

MEMORANDUM ORDER

On July 24, 2015, Magistrate Judge Susan Paradise Baxter issued a Report and Recommendation (“R&R”) (ECF No. 38), which recommended that the MOTION TO DISMISS PLAINTIFFS’ SECOND AMENDED COMPLAINT (ECF No. 28) filed by Defendants City of Erie and Police Officers Sergeant Keith A. Kaschalk, Corporal Janus, Corporal Matt Williams and EPD Jason Russell (collectively, the “City Defendants”) be GRANTED in its entirety; and that the MOTION TO DISMISS PLAINTIFFS’ SECOND AMENDED COMPLAINT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6) (ECF No. 32) filed by Defendants Erie County Sheriffs Department, Chief Deputy Habursky, Deputy David Orr, Deputy Jeremy Markham and Corporal Doug Kubiak (collectively, the “County Defendants”) be granted as to the false arrest/false imprisonment, malicious prosecution, excessive force, failure-to-intervene and conspiracy claims. Magistrate Judge Baxter further recommended that summary judgment be granted to the County Defendants as to the false arrest/false imprisonment

and malicious prosecution claims, that the Court decline to exercise supplemental jurisdiction over any pendant state law claims and that Plaintiff not be permitted to further amend his complaint. In sum, although the R&R does not explicitly say so, all of Plaintiff's claims are recommended to be dismissed with prejudice and the case to be docketed as closed. Now pending before the Court are the OBJECTIONS TO THE REPORT AND RECOMMENDATION (ECF No. 39) filed by Plaintiff Michael D. Wardell. None of the Defendants have filed a formal response to the Objections. The Court has determined that no such responses are necessary. Accordingly, the Objections are ripe for disposition.

This Section 1983 civil rights action arose from a July 25, 2011 traffic stop and subsequent arrest of Plaintiff for aggravated assault, resisting arrest, driving under the influence of alcohol and possession of an open container of beer. The case was referred to United States Magistrate Judge Susan Paradise Baxter for a report and recommendation ("R&R") in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Local Rules 72.1.3 and 72.1.4. The Court agrees with the legal analysis of Magistrate Judge Baxter and will adopt her well-reasoned R&R as the opinion of the Court, with one clarification.

The "Motions to Dismiss" filed by both the City Defendants and County Defendants included numerous attached exhibits. The exhibits consisted of court documents relating to the underlying criminal action filed against Wardell in the Court of Common Pleas of Erie County. Magistrate Judge Baxter somewhat vaguely stated that "where it is necessary to do so, this Court will convert the motions to dismiss ... into motions for summary judgment." R&R at 6. The opinion of the Magistrate Judge did refer to several of the exhibits attached to the motions to dismiss (*see* R&R at 11, 13). More importantly, however, Magistrate Judge Baxter concluded that "despite repeated instructions, Plaintiff's Second Amended Complaint still does not provide

the facts necessary to understand the story of what happened to him, when it happened and by whom.” R&R at 8. Indeed, Magistrate Judge Baxter held that the false arrest/false imprisonment and malicious prosecution claims must fail, as a matter of law, because Plaintiff failed to plausibly allege that Defendants had acted without probable cause. Magistrate Judge Baxter rejected Plaintiff’s legal theory and explained that the mere fact that evidence was later suppressed by the state court “does not demonstrate lack of probable cause.” R&R at 9. This analysis, with which the Court agrees, was not dependent upon facts outside of the Second Amended Complaint. In any event, when evaluating a Rule 12(b)(6) motion to dismiss for failure to state a claim, a court may consider matters of public record and undisputedly authentic documents if the plaintiff’s claims are based upon those documents. *Pension Benefit Guar. Corp. v. White Consol. Indus.*, 998 F.2d 1192, 1196 (3d Cir. 1993). The state court records submitted by the Defendants in this case fall completely within these parameters. Accordingly, it was not necessary to convert the motion to dismiss into a motion for summary judgment.

AND NOW, this 16th day of October, 2015, after a *de novo* review of the Objections of Plaintiff, **IT IS HEREBY ORDERED, ADJUDGED and DECREED** that the R&R of Magistrate Judge Baxter dated July 24, 2015 is **ADOPTED** as the Opinion of the Court, as clarified above; Plaintiff’s OBJECTIONS TO REPORT AND RECOMMENDATION (ECF No. 39) are **DENIED**; the MOTION TO DISMISS PLAINTIFFS’ SECOND AMENDED COMPLAINT (ECF No. 28) filed by Defendants City of Erie and Police Officers Sergeant Keith A. Kaschalk, Corporal Janus, Corporal Matt Williams and EPD Jason Russell is **GRANTED** in its entirety; the MOTION TO DISMISS PLAINTIFFS’ SECOND AMENDED COMPLAINT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6) (ECF No. 32) filed by

Defendants Erie County Sheriffs Department, Chief Deputy Habursky, Deputy David Orr, Deputy Jeremy Markham and Corporal Doug Kubiak is **GRANTED IN PART** as to all federal claims (the false arrest/false imprisonment, malicious prosecution, excessive force, failure-to-intervene and conspiracy claims); and the Court declines to exercise supplemental jurisdiction over any pendant state law claims. Plaintiff shall not be permitted to further amend his complaint and the clerk shall docket this case closed.

s/ Terrence F. McVerry
TERRENCE F. McVERRY
Senior United States District Judge

cc: U.S. Magistrate Judge Susan Paradise Baxter

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